Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

73-762

IN THE SUPREME COURT OF THE UNITED STATES

CAROL MAUREEN SOSNA, on behalf of herself and all others similarly situated, Plaintiff, vs. THE STATE OF IOWA, and A. L. KECK, individually, and as Judge of the District Court of the State of Iowa in and for Jackson County, Defendants.	JURISDICTIONAL STATEMENT

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I

A. The memorandum opinion and order entered on July 16, 1973, by a three-judge court convened in the Northern District of Iowa is attached hereto as Appendix A and made a part hereof. The opinion was reported at 42 U.S.L.W. 2086 and 360 F. Supp. 1182.

B. The memorandum ruling on a special appearance entered on December 27, 1972, by Judge A. L. Keck of the District Court of Iowa in and for Jackson County is attached hereto as Appendix B and made a part hereof.

II

A. This appeal is taken from an order of a three-judge court denying Appellant's application for declaratory and injunctive relief. The three-judge court was convened upon Appellant's application in the U.S. District Court for the Northern District of Iowa based upon 28 U.S.C. §§ 2281 and 2284 and pursuant to an order of Chief Judge Matthes of the Eighth Circuit Court of Appeals dated January 26, 1973.

This appeal is brought pursuant to 28 U.S.C. § 1253, allowing a direct appeal to the Supreme Court where a three-judge court issues a final order denying a permanent injunction in a civil action required to be heard by a three-judge court. Here, 28 U.S.C. § 2281 required a three-judge court because the Appellant was seeking to have enjoined the

enforcement of a state statute on the ground that it is unconstitutional.

B. Appellant seeks review of an order entered in the U.S. District Court for the Northern District of Iowa on July 16, 1973, at 1:00 p.m. by the three-judge court, Chief Judge McManus dissenting. Notice of Appeal was filed in the U.S. District Court for the Northern District of Iowa on September 13, 1973.

C. Jurisdiction of this appeal is conferred upon the Supreme Court by 28 U.S.C. § 1253.

D. The following cases are believed to sustain the Supreme Court's jurisdiction of this appeal:

Goldstein v. Cox 396 U.S. 471, 24 L. Ed. 2d 663, 90 S. Ct. 671 (1970).

Flast v. Cohen 392 U.S. 83, 20 L. Ed. 2d 947, 88 S. Ct. 1942 (1968).

Colman v. Miller 307 U.S. 433, 83 L. Ed. 1385, 59 S. Ct. 972 (1939).

E. The validity of the following sections of the Code of Iowa are involved:

> 598.6 "Additional contents. Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5, must state that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence therein after deducting all absences from the state; and that the maintenance of the residence has been in good faith and not for the purpose of obtaining a marriage dissolution only."
> Code of Iowa § 598.6 (1973), Volume II, page 2906.
>
> 598.9 "Residence--failure of proof. If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court."
> Code of Iowa § 598.9 (1973), Volume II, page 2907.

III

QUESTIONS PRESENTED BY THE APPEAL

A. Do Sections 598.6 and 598.9 of the Code of Iowa present an unconstitutional infringement upon the appellant's Fourteenth Amendment right to equal protection of the laws by creating a discriminatory classification which has the effect of penalizing her fundamental right of free interstate migration and which is not justified by a compelling state interest?

B. Do Sections 598.6 and 598.9 of the Code of Iowa present an unconstitutional infringement upon the rights guaranteed to the Appellant by the First Amendment and the Due Process Clause of the

Fourteenth Amendment by denying access to the courts through an irrebuttable presumption of law which is overbroad in its reach and which is not justified by a state interest of overriding signifcance?

IV

STATEMENT OF THE CASE

The appellant, Carol Maureen Sosna, is presently a resident of Green Island, Jackson County, Iowa. She has resided there since August, 1972, prior to which she resided in the State of New York. She was married to Michael Sosna on September 5, 1964, in the State of Michigan.

In September, 1972, appellant instituted marriage dissolution proceedings against Michael Sosna, a resident of New York, in the District Court of Iowa, Jackson County, pursuant to Chapter 598 of the Code of Iowa. Personal service was obtained upon Michael Sosna while he was temporarily present in Iowa.

Section 598.6 of the Code of Iowa requires a one-year Iowa residency by a non-resident. By order dated December 27, 1972, District Judge A. L. Keck, a co-appellee herein, in a ruling on a special appearance of the respondent, dismissed the petition pursuant to Section 598.9 of the Code of Iowa for want of jurisdiction.

Appellant brought a class action pur-

suant to Rule 23 of the Federal Rules of Civil Procedure seeking to have Sections 598.6 and 598.9 declared unconstitutional as violative of her rights under the First and Fourteenth Amendments to the U.S. Constitution. Appellant also asked for a permanent injunction against further enforcement of Sections 598.6 and 598.9

A three-judge district court was convened to consider the merits of the cause pursuant to 28 U.S.C. S 2281. By order dated July 16, 1973, and signed by Circuit Judge Roy L. Stephenson and Chief District Judge William C. Hanson, with Chief District Judge Edward J. McManus dissenting, Appellant's complaint was dismissed. Thereafter, on September 13, 1973, Appellant filed Notice of Appeal to the Supreme Court.

V

SUBSTANTIALITY OF THE QUESTIONS

This appeal presents substantial questions concerning the validity of a state statute under the United States Constitution. The appeal arises out of a controversy between the parties with regard to the operation and effect of sections of the U.S. Constitution. The Appellant claims a right which will be denied if the Constitution is given the construction asserted by the Appellees and which will be granted if the construction asserted by the Appellant is applied. Denial of

the claimed right affects the Appellant in a material, personal, significant way, and the appeal is pursued in good faith.

The questions presented are not foreclosed from controversy by prior decisions of the Supreme Court. The significance of the questions is demonstrated by the number of conflicting lower court decisions involving substantially similar state statutes and substantially similar assertions of Constitutional construction. See, for example, Wymelenberg v. Syman 328 F. Supp. 1353 (E.D. Wisconsin, 1971), Larson v. Gallogly 361 F. Supp. 305 (D. Rhode Island, 1973), Mon Chi Heung Au v. Lum Civil No. 72-3588 (D. Hawaii, filed June 19, 1969), all holding divorce residency requirements unconstitutional. See also Davis v. Davis 210 N.W. 2d 221 (Sup. Ct. Minnesota, 1973), Shiffman v. Makres (M.D. Florida, filed June 1,1973), holding divorce residency requirements constitutionally valid.

In addition, there are recent Supreme Court decisions which have the effect of bringing into question the validity of many state residency requirements. Shapiro v. Thompson 394 U.S. 618, 89 S.Ct. 1322 (1969), Dunn v. Blumstein 405 U.S. 330, 92 S.Ct. 995 (1972). In Shapiro, the Court expressly stated:

> "We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." 394 U.S. 618, 638 n.21; 89 S.Ct. 1322, 1333 n.21.

As a result, significant liberties are in doubt; and prior Supreme Court decisions offer promise to litigants pursuing these liberties without offering direction to the courts.

Respectfully submitted

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APPENDIX A

Opinion of three judge-court entered in

U.S. District Court for the Northern

District of Iowa on July 16, 1973, at

1:00 p.m.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

CAROL MAUREEN SOSNA, on behalf of herself and all others similarly situated,	)	
Plaintiff,	)	
vs.	)	73-C-1002-ED
THE STATE OF IOWA, and A. L. Keck, individually and as Judge of the District Court of the State of Iowa in and for Jackson County,	)	
Defendants.	)	

Before STEPHENSON, Circuit Judge, McManus, Chief District Judge, and Hanson, Chief District Judge

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STEPHENSON, Circuit Judge.

Plaintiff, Carol Maureen Sosna, is presently a resident of Green Island, Jackson County, Iowa. She has resided there since August 1972, prior to which she resided in the State of New York. She was married to respondent, Michael Sosna, on September 5, 1964 in the State of Michigan.

In September 1972, plaintiff instituted marriage dissolution proceedings against respondent, a non-resident, in the District Court of Iowa, Jackson County, pursuant to Iowa Code Chapter 598. Iowa Code § 598.6 (1971), [1] requires a one year Iowa residency

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1. Iowa Code § 598.6 (1971) reads as follows:

"Except where the respondent is a resident of the state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5, must state that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence

1. (cont'd)
therein after deducting all absences from the state; and that the maintenance of the residence has been in good faith and not for the purpose of obtaining a marriage dissolution only."

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by a petitioner when the respondent is a non-resident. By order dated December 27, 1972, the Honorable A. L. Keck, a co-defendant herein, in ruling on a special appearance of respondent, dismissed the petition pursuant to Iowa Code § 598.9 (1971) [2] for want of jurisdiction.

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2. Iowa Code § 598.9 (1971) reads as follows:

"If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court."

Plaintiff now brings this class action pursuant to Fed. R. Civ. P. 23, and seeks to have §§ 598.6 and 598.9 (1971) declared unconstitutional as violative of her right to petition for redress of grievances under the First Amendment, [3] the Fourteenth Amendment, [4] and in violation of

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3. U. S. Const. Amend. I.
4. Id., Amend. XIV.

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her right to travel freely from one state to another insofar as it imposes a one year durational residency requirement. She also prays for an injunction against

its further applications. A three-judge district court was convened to consider the merits of this cause. See, 28 U.S.C. § 2281. [5]

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5. We note at the outset that determination of plaintiff's deferral period in August of 1973, would not render this case moot since the cause before us is a class action and the court is confronted with the reasonable likelihood that the problem will occur to members of the class of which plaintiff is currently a member. See Hall v. Beals, 396 U.S. 45, 48-49, 90 S. Ct. 200, 202 (1969); and compare with, Bailey v. Patterson, 369 U.S. 31, 32-33, 82 S. Ct. 549, 550 (1962); see also, Roe v. Wade, ____ U.S. ____, ____, 93 S. Ct. 705, 712-13 (1973).

"(D)urational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.'" Dunn v. Blumstein, 405 U.S. 330, 342, 92 S. Ct. 995, 1003 (1972); Shapiro v. Thompson, 394 U.S. 618, 634, 89 S. Ct. 1322, 1331 (1969).

We are not dealing here with the right to vote nor the privilege to receive welfare as involved in Dunn, supra and Shapiro, supra. In Dunn, the Court held that a durational residency requirement imposed under Tennessee law which precluded newcomers from voting was not necessary to further a compelling state interest.

With emphasis placed upon the difference between bona fide residence requirements and durational residence requirements, the Court noted that new residents as a group may be less informed relative to state and local issues than older residents, and that durational residency requirements will exclude some uninformed new residents. It concluded, however, that " . . . as devices to limit the franchise to knowledgeable residents, the conclusive presumptions of durational residency requirements are much too crude. . . . They represent a requirement of knowledge unfairly imposed on only some citizens." The basic constitutional right to vote, therefore, could not be annulled where the "relationship between the state interest in an informed electorate" and the one year residency requirement demonstrated "simply too attenuated a relationship." Dunn v. Blumstein, supra, 405 U.S. 330, 359-60, 92 S. Ct. 995, ____ (1972).

In Shapiro, the Court noted that the record reflected "weighty evidence" that the main thrust of the durational residency requirement in issue was to exclude from that jurisdiction the poor who needed or would probably need relief. Shapiro v. Thompson, supra, 394 U.S. 618, 628, 89 S. Ct. 1322, 1328 (1969). In declaring the welfare residency requirement unconstitutional, the Court reasoned that implicit in any attempt to restrain potential welfare recipients from entering a state, when the motivating factor of the indigents is to seek higher benefits, is the notion that this class of indigents is "less deserving than indigents who do not take this consideration into account." Id. 394 U.S. 618, 631-32, 89 S. Ct. 1322, 1330. The net effect of the requirement

was the creation of two classes of indigents--the sole distinction being a residency requirement which denied the newcomers the very means to obtain their subsistence. Id., 394 U.S. 618, 627, 89 S. Ct. 1322, 1327.

Furthermore, the Court expressly stated in Shapiro that it did not purport to outlaw summarily all duration residency requirements.

> "We imply no view of the validity of waiting-period or residence requirements determing eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." 394 U.S. 618, 638 n. 21, 89 S. Ct. 1322, 1333 n. 21."

Unlike voting or welfare, the concept of divorce is not a constitutional right, nor is it a basic necessity to survival. See, Whitehead v. Whitehead, 492 P.2d 939, 945 (Hawaii 1972); accord, Coleman v. Coleman, 291 N.E. 2d 530, 533 (Ohio 1972). Divorce is wholly a creature of statute, with the absolute power to prescribe the conditions relative thereto being vested in the state. [6] See, Pennoyer v. Neff, 95 U.S. 714, 734-35, ___ S. Ct. ___ (1877).

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6. See, Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780 (1971), in which the Supreme Court held that due process prohibits any state from denying

6. (cont'd)
indigents access to its divorce courts solely because of inability to pay court costs.

It is significant to note in this connection that the Iowa Dissolution of Marriage Act is based upon a "no-fault" concept of divorce. See, 20 Drake L. Rev. 211 (1971). While this innovative reform promotes a more harmonious dissolution of a marital breakdown, cf., In re Marriage of Williams, 199 N.W.2d 339, 342 (Iowa 1972), it was not the intent of the legislature to create in Iowa a virtual sanctuary for transient divorces based upon sham domiciles. To the contrary, Iowa law favors the preservation of marriage whenever possible, as evidenced by the ninety-day conciliation period of the new Iowa act. The period is mandatory unless waived by the court upon a showing of good cause. [7] Moreover, the deferral

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7. Iowa Code § 598.16 (1971).

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period may well foster a re-examination of marriage so that a couple might determine whether the move itself has helped restore tranquility to their estranged relationship. Place v. Place, 278 A 2d 710, 711-12 (Vt. 1971); accord, Coleman v. Coleman, supra, 29. N.E. 2d 530, 535 (Ohio 1972). It also serves to discourage Iowa from unnecessarily interfering with a marital relationship between non-residents in which it has no interest.

Based upon the foregoing, with particular consideration being given to the power of a state to regulate its own laws governing marriage and its dissolution, Pennoyer v. Neff, supra, 95 U.S. 714, 734-35, ___ S. Ct. ____ (1377); accord, Boddie v. Connecticut, supra, 401 U.S. 371, 376, 91 S. Ct. 780, 785 (1971), we are convinced that Iowa's interest in establishing a one-year deferral period [8] is sufficiently compelling to render §§ 598.6 and 598.9 of the

8. See, Whitehead v. Whitehead, supra, 492 P.2d 939, 948 (Hawaii 1972), insofar as it states that there is no material difference between the respective periods of residence prescribed by durational residency requirements whether the period be one year or ninety days. "If a prescribed period of one year discriminates against recent residents, so does a prescribed period of ninety days."

1971 Iowa Code constitutionally permissible. [9]

9. In Shapiro, supra, 394 U.S. 618, 630-31, 89 S. Ct. 1322, 1329 (1969), the Court stated that "(i)f a law has 'no other purpose * * * than to chill the assertion of constitutional rights by penalizing those who chose to exercise them, then it (is) patently unconstitutional.'" United States v. Jackson, 390 U.S. 570, 581, 88 S. Ct. 1209, 1216 (1968).

The Vermont court in Place v. Place, supra, 278 A.2d 710, 711 (vt. 1971), noted in response to the foregoing passage: "This is desparately thin guidance. A number of interstate differentials spring to mind that quite certainly chill change of residence, such as, for example, the presence of a state income tax, the measure of unemployment benefits, the extent of public supported education, to name but a few."

ORDER

IT IS ORDERED that plaintiff's complaint is dismissed with prejudice at plaintiff's costs.

/s/ Roy L. Stephenson, Circuit Judge

/s/ William C. Hanson, Chief District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

CAROL MAUREEN SOSNA, on behalf of herself, and all others similarly situated,	)	
Plaintiff,	)	No. 73-C-1002-ED
vs.	)	DISSENTING OPINION
THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County	)	
Defendants.	)	

McMANUS, C.J., DISSENTING:

I am compelled to dissent. In my view the majority's analysis of the constitutional issues involved is deficient. They incorrectly restrict the right to travel rationale, improperly apply the strict equal protection test and ignore the due process/access to the courts argument.

Citing Dunn v. Blumstein and Shapiro v. Thompson, supra, the majority concedes the durational residence requirements must be "measured by a strict equal protection test." From that point, however, the thrust of the opinion seems to be an attempt to distinguish the residence laws at issue in Dunn and Shapiro from that at issue here. Great emphasis is placed upon the fact that Dunn involved the right to vote and Shapiro the right to welfare benefits, while this case involves only divorce, "not a constitutional right, nor . . . a basic necessity to survival." The purpose of this distinction is unclear, but it appears to be a justification for utilizing some unidentified test, less stringent than strict equal protection. Although the majority does offer several purportedly "compelling" justifications for the discriminatory classifications inherent in section 598.6 of the Iowa Code, the record is devoid of evidence to support these justifications, since the state produced absolutely no evidence. See Dunn, supra, at 346. Also the majority never expressly recognizes the necessity for considering less onerous alternatives when applying the "strict equal protection test." Accordingly, I deem it necessary to set forth what I consider to be the appropriate constitutional analysis mandated by the relevant case law.

It can no longer be disputed that the right to unhindered interstate travel and settlement, in and of itself, is a fundamental right guaranteed by the constitution of the United States. Dunn v. Blumstein, supra, at 338 (1972); Oregon v. Mitchell, 400 U.S. 112, 237 (separate opinion of Brennan, White and Marshall, JJ.), 285-286 (Stewart, J., concurring and dissenting, with whom Burger, C.J., and Blackmun, J., joined) (1970). Shapiro v. Thompson, supra, at 629-631 (1969); United States v. Guest, 383 U.S. 745, 758 (1966). It is also clear that section 598.6 of the Iowa Code is a durational residence requirement which penalizes only petitioners who have recently exercised the right to interstate migration. The majority's attempt to distinguish Dunn and Shapiro seems unfounded in view of the explicit language in Dunn wherein the court stated that "whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classification (recent interstate travel) we conclude that the State must show a substantial and compelling reason for imposing durational residence requirements." Id, at 335.

The standard, therefore, that must be applied in determining the constitutionality of sections 598.6 and 598.9 of the Iowa Code (1971) is the strict equal protection test. Under this test the burden is on the state to demonstrate that (1) the classification serves a compelling state interest, and (2) that no less restrictive alternatives are available to the state. As the court stated in Dunn, "It is not sufficient for the State to show that durational residence requirements further a very substantial state interest.

In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict unconstitutionally protected activity." Id, at 343; see Oregon v. Mitchell, supra, at 237, 239; Shapiro v. Thompson, supra, at 634-638; N.A.A.C.P. v. Button, 371 U.S. 415, 438 (1962); Wymelenberg v. Syman, 329 F. Supp. 1353 (E. D. Wisc. 1971). See also Whitehead v. Whitehead, 492 P. 2d 939, 948 (1972) (Levinson, J., dissenting).

As the first "compelling" justification for section 598.6, the majority has found that it serves to prevent Iowa from becoming "a virtual sanctuary for transient divorces based upon sham comiciles." [1]

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1. The limited classification which § 598.6 creates also appears violative of the Equal Protection Clause due to its arbitrary imposition of a one-year residency requirement where the petitioner is a resident and the respondent is not, without imposing the same requirement in similar situations such as where the respondent resides in Iowa and the petitioner does not. See United States Dep't. of Agriculture v. Moreno, 41 L.W. 5105 (June 25, 1973). The arbitrariness of the scheme is illustrated by the ease with which divorces can be obtained under the present statute through the use of sham residences. For example, "if both parties desire the divorce and are willing to co-operate, it is possible to avoid the establishment of 'residence' in Iowa. . . . All that the parties need do is falsify their petition for divorce to the effect

1. (cont'd)
that the defendant is a resident of the state--a statement which the Iowa courts apparently are unwilling to scrutinize." Note, Some problems Under Iowa's Judicial Jurisdiction Statutes, 48 Iowa L. Rev. 968, 982 (1963). Additionally, without needing to falisfy the petition, the respondent could actually move into Iowa and the petitioner could immediately file for divorce even though not a resident. Thus, in addition to being violative of the Equal Protection Clause due to its arbitrariness, § 598.6 also appears to make Iowa subject to becoming a "divorce mill" even with its one-year residency requirement in the limited situation before the Court.

This finding completely avoids the basic issue. Admittedly, Iowa has a legitimate interest in not becoming a "divorce mill." The critical question, however, is whether this interest is served by denying bona fide residents of the state the right to seek a dissolution. [2] In creating an

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2. It is clear from the evidence that the plaintiff is a bona fide resident of the state and not here merely for the purpose of obtaining a marriage dissolution.

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irrebuttable presumption against recently arrived residents, the Iowa law sweeps too broadly since there are less restrictive

alternatives available to the state. In my opinion, the Iowa judiciary is perfectly competent to determine whether the residence of a petitioner has been maintained in good faith and not for the purpose of obtaining a dissolution. [3] Neither the

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3. Adequate protection would be afforded by limiting access to dissolution to those who are permanent or bona fide residents or domiciliaries of the state, meaning those physically present in the state with intent to make it their home. The burden to establish such would be on the petitioner. See Dunn, supra, at 343-54. "(S)uch objective indicia of bona fide residence as a dwelling, car registration, or drivers license," among other things, provide an adequate basis for a judicial determination of bona fide residence. Dunn, supra, at 352.

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specter of perjury nor the argument for administrative convenience is supportive of the majority's position or sufficient to justify the durational residence requirement in question. See Vlandis v. Kline, ____ U.S. _____, 41 L.W. 4796 (June 1973); Dunn, supra, at 345-54; Boddie v. Connecticut, 401 U.S. 371, 381-82 (1971); Shapiro, supra, at 633; Carrington v. Rash, 380 U.S. 89 (1965). As stated in Dunn, supra, at 352,

> "The State's legitimate purpose is to determine whether certain persons in the community are bona fide residents.

A durational residence requirement creates a classification that may, in a crude way, exclude non-residents from that group. But it also excludes many residents. Given the State's legitimate purpose and the individual interests that are affected, the classification is all too imprecise. . . . In general, it is not very difficult for Tennessee to determine on an individualized basis whether one recently arrived in the community is in fact a resident, although of course there will always be difficult cases. . . . But since Tennessee's presumption from failure to meet the durational residence requirements is conclusive, a showing of actual bona fide residence is irrelevant, even though such a showing would fully serve the State's purposes embodied in the presumption and would achieve those purposes with far less drastic impact on constitutionally protected interests."[4]

4. Although it has not been urged by the plaintiff, it appears that the "irrebuttable presumption" created by section 598.6 is also subject to attack on due process grounds in view of Vlandis v. Kline, supra. See also Stanley v. Illinois, 405 U.S. 645 (1972); Bell v. Burson, 402 U.S. 535 (1971); Heiner v. Donnan, 285 U.S. 312 (1932). Speaking for the majority, Justice Stewart found that a "permanent irrebuttable presumption of nonresidence . . . is violative of the Due Process Clause, because it provides no opportunity for students . . . to demonstrate that they have

4. (cont'd)
become bona fide . . . residents. The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates."

Although the "irrebuttable presumption" in this case is not permanent but only for one year, the state's denial of any opportunity to demonstrate bona fide residence appears violative of the due process clause in view of the other alternatives available to the state. See Dunn, supra, at 352.

With regard to the other reasons advanced by the majority in support of § 598.6, I am convinced that they do not serve any compelling state interest. Initially, the majority states that the one-year "deferral period may well foster a re-examination of marriage so that a couple might determine whether the move itself has helped restore tranquility to their estranged relationship." This reasoning, however, completely ignores the fact that § 598.6 requires a one-year residency of a petitioner only in the limited situation where the respondent does not reside in Iowa.[5] It is difficult

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5. § 598.6 requires a one-year residency of a petitioner "(e)xcept where

5. (cont'd)
respondent is a resident of this state and is served by personal service, . . ."

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to conceive how "a couple might determine whether the move itself has helped restore tranquility to their estranged relationship" when in fact they are living in different states. The majority's argument would be more plausible had the state ween fit to impose a one-year deferral period where both the petitioner and the respondent are residents of the state.

The final state interest advanced by the majority is that the one-year deferral period "serves to discourage Iowa from unnecessarily interfering with a marital relationship between non-residents in which it has no interest." This argument, however, ignores the fact that in the case of a bona fide resident, the state does have an interest in the marriage relationship regardless of whether the petitioner has been in Iowa for one year. Additionally, the argument ignores the fact that Iowa imposes no one-year deferral period in the situation where the respondent has recently moved to Iowa and the petitioner still lives in another state. The unnecessary interference in that situation, if any, would appear to be no different than in the present case.

Finally, the majority has ignored the due process/access to the courts concept enunciated in Boddie v. Connecticut, supra. Contrary to the majority's contention that "divorce is wholly a creature of

statute, with the absolute power to prescribe the conditions relative thereto being vested in the state", and recognizing that marriage is a fundamental human relationship involving interests of basic importance in our society, the court in Boddie held that a state may not, consistent with the obligations imposed by the Due Process Clause, deny one class of citizens access to the procedures for adjusting that relationship, absent a showing by the State of a sufficient countervailing justification for that denial. Boddie, supra, at 380; Wymelenberg v. Syman, supra; Whitehead v. Whitehead, supra. As with the filing fee requirement in Boddie, the durational residence requirement of § 598.6 denies one class of citizens access to the only procedure available for obtaining a dissolution. As a result, the state must show a sufficient countervailing justification for its restriction on plaintiff's right to access to the courts to dissolve her marriage, which it totally failed to do.

For the above reasons I am of the view that the state has shown no sufficient countervailing justification to support its one-year residence requirement in light of the alternatives available.

July 11, 1973.

/s/ Edward J. McManus, Chief Judge
UNITED STATES DISTRICT COURT

APPENDIX B

Ruling on special appearance entered in

Iowa District Court in and for Jackson

County, Iowa, on December 27, 1972, at

4:25 p.m.

IN THE DISTRICT COURT OF IOWA
IN AND FOR JACKSON COUNTY

IN RE THE MARRIAGE OF CAROL MAUREEN SOSNA
AND MICHAEL SOSNA

Upon the Petition of CAROL MAUREEN SOSNA, Petitioner, and concerning MICHAEL SOSNA, Respondent.	CASE NO. D-1-150 RULING ON SPECIAL APPEARANCE

Respondent's special appearance attacking the jurisdiction of this court was submitted November 20th, 1972, on oral arguments and written briefs. Counsel for each party appeared.

Such facts as are available at this stage are not in dispute and in effect are stipulated and obtained by the Court from statements of counsel, the petition, the special appearance and an affidavit filed by petitioner.

Petitioner moved into the State of Iowa in August of 1972. In September of 1972, she filed a petition for dissolution of marriage in this court. Though respondent is a resident of New York City, he was personally served with original notice in Iowa and the circumstances of his convenient presence in this area at the time are unknown to the Court. It is noted that respondent is a "Poverty Lawyer for O.E.O." and that petitioner's attorney is affiliated with the Dubuque, Iowa Area Legal Services Agency. Prior to her move to Iowa, petitioner lived in New York City and there appears to be no question but that New York was the place of matrimonial domicile.

Petitioner admits she has been a resident in Iowa less than one year and requests the court to "waive" this requirement of Iowa law on constitutional grounds. Her affidavit discloses that two weeks prior to her move, "separation" negotiations or agreements in New York involving support were terminated and that separation papers agreed upon by the parties became "out of the question".

Respondent's special appearance asserts lack of jurisdiction in this court by virtue of the provisions of I.C.A. § 598.6, which requires one year's residence in this state of a petitioner when the respondent is nonresident. The Court can find no authority for waiver of this requirement and further feels that I.C.A. § 598.9 is here involved and requires dismissal of the cause on the showing made. Also, petitioner has failed to allege that the maintenance of her residence in Iowa has been in good faith and not for the purpose of obtaining a marriage dissoltuion only, which is a mandatory requirement of § 598.6 in addition to the requirement of § 598.5(6).

This Court is aware of the Federal decisions minimizing residency requirements in certain areas such as welfarism and voting qualifications. The cases cited by petitioner have been reviewed insofar as library resources permit. Special attention has been given to Wymelenberg vs. Syman (Wisconsin 1971), 328 F. Supp. 1353. The Wisconsin statute thereby invalidated was one of prohibition only and required one of the parties to be a bona fide resident of the state for at least two years. It is difficult to determine from the opinion, but it does appear that both spouses were in fact residents of Wisconsin for a period of time and, if that was the case, they were both no doubt effectively denied access to any court. The Iowa statute does not deny a recent arrival in the state, or even a nonresident, access to our courts in dissolution of marriage matters, if the respondent is a resident of Iowa with no length of residence on his part required.

The Iowa statute legimately requires a showing of one year's residence on the issue of good faith residency, where respondent is a nonresident, and to negate residency for the obtaining of a divorce only. This is reasonable, and the rule of reason should prevail in this area which historically lies within the jurisdiction of the states. Where respondent is a nonresident, petitioner is not denied access to any court and can pursue her cause in the place of residence of the respondent which, in this case, was the place of the last common domicile and where divorce or separation proceedings or negotiations were apparently in progress at the time of her move.

The Iowa dissolution of marriage enactment is liberal legislation, perhaps among the most liberal in the country. It may be speculated that this factor prompted petitioner's move to this state. There is no residency requirement for spouses newly domiciled here nor for a respondent newly arrived who is a resident. The requirement above referred to properly applies only to the spouse who leaves the matrimonial domicile and her spouse in the former jurisdiction. This is not class discrimination as petitioner urges nor does it infringe her options to travel. Rather, it implements the state's public policy in a field long reserved to the states. Marital stability involves interests of basic importance in our society. Fundamental human relationship is involved representing one of the basic civil rights of man. In these matters the state has a compelling interest of over-riding significance. The touring petitioner is not unduly discriminated against nor is her class

deprived of equal protection or travel rights by a reasonable residential requirement to evidence good faith and negate residency for the obtaining of a divorce only. For a similar, not identical, case, see Korsrud vs. Korsrud, 45 NW2d 848 (Iowa 1963) wherein the disgruntled divorce litigant fled Hawaii, the matrimonial domicile, to Iowa, and fraudulently claimed residence or domicile, and quickly obtained a decree, later vacated by reason of the law here involved.

Finally, it is well established in this state that fine line decisions involving questions of constitutional law, rights and privileges, are best not decided in the forum of the district court and at this level.

This Court therefore elects to follow the clear statutory law of this state contained in the present dissoltuion of marriage statutes herein cited, which were carried over from the prior divorce statutes and the litigated cases decided under these statutes, and which are precedent for this ruling. Pursuant thereto, this Court finds that it lacks jurisdiction to proceed.

The Court therefore finds that respondent's special appearance should be and the same is hereby SUSTAINED and petitioner's petition for dissolution of marriage is DISMISSED at her cost.

All of which is hereby ordered this 27th day of December, 1972.

/s/ A. L. KECK
JUDGE OF THE 7TH JUDICIAL DISTRICT

COPIES TO COUNSEL

APPENDIX C

Copy of Notice of Appeal filed in U.S.

District Court for the Northern District

of Iowa on September 13, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

CAROL MAUREEN SOSNA, on behalf of herself and all others similarly situated, Plaintiff,	)	73-C-1002-ED
vs.	)	
THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County, Defendants.	)	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Carol Maureen Sosna, on behalf of herself and all others similarly situated, the Plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the complaint, entered in this action on July 16, 1973. This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ Paul E. Kempter
/s/ Fred H. McCaw

Attorneys for Carol Maureen Sosna
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of Counsel:

/s/ James H. Reynolds